2/2/10



Exec. Sec. 0

MJ MUELLER, LLC d/b/a
BENJAMIN FRANKLIN PLUMBING
and its Alter Ego, BoRyJer, LLC d/b/a
BENJAMIN FRANKLIN PLUMBING

and

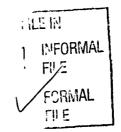
Cases 18-CA-18216 18-CA-18419

18-CA-18504

MICHAEL J. MUELLER

and

UNITED ASSOCIATION OF PLUMBERS AND GASFITTERS, LOCAL UNION NO. 34



ORDER TRANSFERRING PROCEEDING TO THE BOARD and NOTICE TO SHOW CAUSE

On December 18, 2009, the General Counsel filed with Administrative Law Judge George Aleman a Motion for Partial Default Judgment on the ground that Respondent MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing and Respondent Michael J. Mueller had failed to file answers to the Compliance Specification and Notice of Hearing.¹ The hearing was scheduled for January 7, 2010. On January 5, 2010, Respondent BoRyJer, LLC d/b/a Benjamin Franklin Plumbing, which had filed a timely answer to the Compliance Specification, entered into a settlement agreement with the General Counsel resolving the allegations against

¹ Subsequently, this Motion was inadvertently transferred to the Board for ruling. On December 29, 2009, the Board granted the General Counsel's motion to rescind the Order Transferring the Proceeding to the Board, and remanded the General Counsel's Motion for Partial Default Judgment to the Administrative Law Judge for ruling.

Respondent BoRyJer. Consequently, the Administrative Law Judge postponed indefinitely the hearing scheduled for January 7, 2010.

In light of these developments and the current status of the case, on January 8, 2010, the Administrative Law Judge transferred to the Board for disposition the General Counsel's Motion for Partial Default Judgment against Respondents MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing and Michael J. Mueller. Having duly considered the matter,

IT IS ORDERED that the above-entitled proceeding be transferred to and continued before the Board in Washington, D.C.

NOTICE IS GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C. on or before February 16, 2010 (with affidavit of service on the parties to this proceeding), why the General Counsel's Motion for Partial Default Judgment should not be granted. Any briefs or statements in support of the Motion shall be filed by the same date.

Dated, Washington, D.C., February 2, 2010.

By direction of the Board:

Lester A. Heltzer

Executive Secretary

1/8/10

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

MJ MUELLER, LLC d/b/a BENJAMIN FRANKLIN PLUMBING and its Alter Ego, BoRyJer, LLC d/b/a BENJAMIN FRANKLIN PLUMBING

and

Case Nos. 18-CA-18216 18-CA-18419

MICHAEL J. MUELLER, An Individual

18-CA-18504

and

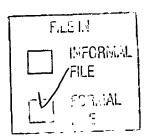
UNITED ASSOCIATION OF PLUMBERS AND GASFITTERS, LOCAL UNION NO. 34

David Biggar, Esq., for the General Counsel.

Paul J. Zech, Esq., for Respondent BoRyJer.

Michael J. Mueller, for Respondent MJ Mueller d/b/a

Benjamin Franklin Plumbing.



ORDER TRANSFERRING MOTION FOR PARTIAL DEFAULT JUDGMENT TO THE BOARD

On October 29, 2009, the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued a Compliance Specification and Notice of Hearing in the above-captioned matter. The Specification alleges that MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing, and its alter ego BoRyJer, LLC d/b/a Benjamin Franklin Plumbing, and Michael J. Mueller, an individual, have not complied with a decision and order issued by the Board in this matter on May 30, 2008.¹ A hearing was set in the Specification for January 7, 2010, to resolve a controversy over the amounts due under the Board's order. On December 1, 2009, Respondent BoRyJer timely filed an answer to the Compliance Specification denying the allegations against it. Neither Respondent MJ Mueller d/b/a Benjamin Franklin Plumbing, nor Michael J. Mueller, have, to date, filed an answer to the Specification.

On December 18, 2009, Counsel for the General Counsel filed with the undersigned a Motion for Partial Default Judgment against Respondents MJ Mueller d/b/a Benjamin Franklin Plumbing and Michael J. Mueller based on their failure to file

¹ See, 352 NLRB 525 (2008). Only MJ Mueller, LLC. d/b/a Benjamin Franklin Plumbing was named as a respondent in the underlying Board proceeding. In that decision, the Board found, inter alia, that the Respondent had unlawfully terminated employees Donald Doty and Steven LaMont, and ordered that they be reinstated and be made whole for any loss of earnings and other benefits, with interest. On February 27, 2009, a U.S. Court of Appeals for the Eighth Circuit entered a judgment enforcing the Board's order and a Stipulation for Entry of Consent Judgment agreed to by the Respondent MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing.

answers to the Compliance Specification as required by Section 102.56(a) of the Board's Rules and Regulations.²

On January 5, 2010, BoRyJer entered into a settlement agreement with Counsel for the General Counsel resolving the allegations against BoRyJer set forth in the Compliance Specification. The hearing scheduled for January 7, 2010, has, consequently, been indefinitely postponed.

Thus, the only matter currently pending in this case is Counsel for General Counsel's Motion for Partial Default Judgment against Respondents MJ Mueller d/b/a Benjamin Franklin Plumbing and Michael J. Mueller Given the current status and changed posture of the case, in particular, resolution of all allegations against Respondent BoRyJer and the indefinite postponement of the hearing, I believe and find that, under Section 102.24 of the Board's Rules and Regulations, the Board is the correct and proper venue for resolution of Counsel for the General Counsel's remaining Motion for Partial Default Judgment. Accordingly,

IT IS ORDERED that Counsel for the General Counsel's Motion for Partial Default Judgment in this case be, and it hereby is, transferred to the Board for disposition.

Dated, Washington, D.C. January 8, 2010

George Aleman

Administrative Law Judge

² The Motion for Partial Summary Judgment was subsequently, and inadvertently transferred to the Board for ruling. By Order dated December 29, 2009, the Board, through its Executive Secretary, granted Counsel for the General Counsel's motion to rescind the order transferring the matter to the Board, and remanded Counsel for the General Counsel's Partial Summary Judgment motion to the undersigned for ruling

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2010, I served the foregoing Order Transferring Motion for Partial Default Judgment to the Board by U.S. Mail on the following parties:

Mr. Michael J. Mueller
MJ Mueller, LLC d/b/a Benjamin
Franklin Plumbing
36605 Lincoln Trail
North Branch, MN 55056

Mr. Michael J. Mueller 36605 Lincoln Trail North Branch, MN 55056

Mr. Michael J. Mueller 36539 Lincoln Trail North Branch, MN 55056

BoRyJer, LLC d/b/a Benjamin Franklin Plumbing 31040 Forest Boulevard Stacy, MN 55079

BoRyJer, LLC d/b/a Benjamin Franklin Plumbing Attn: Robert Mueller 7334 Highway 29 Meadowlands, MN 55765 Rick Klein, Organizer
United Association of Plumbers and
Gasfitters, Local Union No. 34
Labor Centre
411 Main Street, Room 215
St. Paul, MN 55102

Nicole M. Blissenbach, Attorney Miller O'Brien Cummins PLLP 2400 One Financial Plaza 120 South Sixth Street Minneapolis, MN 55402

Paul J. Zech, Attorney Felhaber Larson Fenlon & Vogt P.A. 220 South 6th Street Suite 2200 Minneapolis, MN 55402-4504

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National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221